SUBJECT INDEX

	Page
Statement	1
Issue Presented	3
Conclusion	8

TABLE OF AUTHORITIES CITED

Cases

Griffin v. Illinois, 351 U.S. 12	7
Novarro, In re, 372 U.S. 936, 9 L. Ed. 2d 766	2
Novarro v. Pitchess, 368 F. 2d 803	3, 6
People v. Maggiora, 207 Cal. App. 2d Supp. 908	4
Renk v. Municipal Court, 213 Cal. App. 2d 132	4

Statutes

California Motor Vehicle Code, Sec. 23102	1
California Motor Vehicle Code, Sec. 40300	6
California Motor Vehicle Code, Secs. 40300-40311	6, 7
California Motor Vehicle Code, Sec. 40306	3, 4
California Penal Code, Sec. 960	5, 6
California Penal Code, Sec. 1258	5, 6
California Penal Code, Sec. 1404	5, 6

IN THE

Supreme Court of the United States

October Term, 1966
No. 1191

In the Matter of

RAMON NAVARRO.

Brief of Respondent in Opposition to Petition for Writ of Certiorari.

Statement.

Petitioner was charged by the People of the State of California in a verified complaint with a violation of Section 23102 of the California Motor Vehicle Code. The verified complaint was signed by one J. W. Fletcher, a police officer, on his information and belief. J. W. Fletcher was not the arresting officer. Petitioner was duly arraigned, informed of the charge against him and of his legal rights, and entered a plea of not guilty. The petitioner was later convicted of the charge.

Petitioner filed consecutive petitions for Writs of Prohibition in the Superior Court in Los Angeles County, the District Court of Appeal and the California Supreme Court, each petition being denied by the respective court.

Petitioner then filed in the Appellate Department of the Superior Court, an appeal from the Municipal Court

judgment of conviction, but the appeal was dismissed due to failure to timely file the notice of appeal.

Petitioner then filed consecutive petitions for Writs of Habeas Corpus in the Superior Court for Los Angeles County, the District Court of Appeal and the California Supreme Court, each petition being denied by the respective court.

After all California courts had ruled against petitioner, he then filed, on October 4, 1962, a petition for Habeas Corpus with the United States District Court for the Southern District of California, Central Division. The petition for Habeas Corpus was denied because petitioner had not exhausted his remedies, *i.e.*, petition for a Writ of Certiorari in the United States Supreme Court to review the California Supreme Court denial of the Petition for Habeas Corpus.

A Petition to the United States Supreme Court for Writ of Certiorari was denied. *In re Novarro* (1963), 372 U.S. 936, 9 L. Ed. 2d 766.

On August 20, 1965, the United States District Court granted a restraining order pending petitioner's filing a petition for Writ of Habeas Corpus. Petitioner filed the Petition for Writ of Habeas Corpus and it was denied without a hearing on November 16, 1965.

Petitioner then filed, in the United States Court of Appeals, Ninth Circuit, an appeal from the denial of the Writ of Habeas Corpus by the United States District Court. After a hearing, the Court of Appeals af-

firmed the lower court's decision on November 14, 1966, in *Novarro v. Pitchess,* 368 F. 2d 803, where it said on page 804, that petitioner was not prejudiced by the state procedure and that no federal question was presented.

Petitioner for the second time seeks a Writ of Certiorari in this Court on the same issue decided by the United States Court of Appeals; that whether under specified state statues the petitioner was deprived of a federal right, namely, to have the arresting officer sign the complaint charging the defendant with a crime. Petitioner has been denied Certiorari before in this case on the same issue.

Issue Presented.

Does the failure to follow a state procedural rule that allegedly requires the arresting police officer to sign the complaint present a federal question and if so, does it constitute a violation of the due process provisions of the Fourteenth Amendment of the United States Constitution?

Petitioner's contention is that Section 40306 of the California Motor Vehicle Code requires the arresting officer to sign the complaint and failure of the arresting officer to sign the complaint constitutes a violation of due process.

Section 40306 provides:

> (a) Whenever a person is arrested for a misdemeanor and is taken before a magistrate, the arresting officer shall file with the magistrate a complaint stating the offense with which the person is charged.

(b) The person taken before a magistrate shall be entitled to at least five days continuance of his case in which to plead and prepare for trial and the person shall not be required to plead or be tried within the five days unless he waives such time in writing or in open court.

(c) The person taken before a magistrate shall thereupon be released from custody upon his own recognizance or upon such bail as the magistrate may fix.

Section 40306 only requires the police officer to *file* the complaint but does not require him to *sign* it. In *People v. Maggiora,* 207 Cal. App. 2d Supp. 908, the court pointed this fact out and said on page 910:

"The obvious purpose of the section is to place upon the arresting officer the primary responsibility to see that the complaint is filed . . . we hold that the arresting officer may file the complaint personally or he may activate the machinery which causes the complaint to be filed. It is an old maxim of jurisprudence that 'Qui facit per alium facit per se.' In either case the purpose of the section has been accomplished when the complaint is filed."

As pointed out in *Maggiora, supra,* and *Renk v. Municipal Court,* 213 Cal. App. 2d 132, Section 40306 is only a statutory procedure rule adopted by the California Legislature. It is not a constitutional requirement of due process. In *Renk, supra,* the court on page 134 said:

"The same legislative body that created the requirement also enacted section 960, Penal Code,

providing '[N]o, accusatory pleading is insufficient,' because of a defect in form absence prejudice.' The Legislature has also required appellate courts in section 1258, Penal Code, to disregard 'technical errors or defects.' "

Penal Code Section 960 provides:

> [Same; Defects or imperfections in matter of form not prejudicial to substantial right of defendant.] No accusatory pleading is sufficient, nor can the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form which does not prejudice a substantial right of the defendant upon the merits.

Penal Code Section 1258 provides:

> Court to give judgment without regard to technical errors. After hearing the appeal the court must give judgment without regard to technical errors or defects, or to exceptions, which do not affect the substantial rights of the parties.

Section 1404 provides:

> When not material. Neither a departure from the form or mode prescribed by this code in respect to any pleading or proceeding, nor an error or mistake therein, renders it invalid, unless it has actually prejudiced the defendant, or tended to his prejudice, in respect to a substantial right.

It is basic to statutory interpretation that a statute must be construed reasonably considering the objects sought to be obtained.

Sections 960, 1258 and 1404, Penal Code, all point up the fact that before a procedural error constitutes reversible error it must be shown that the mistake has actually prejudiced the defendant. In the instant case, the United States Court of Appeals in reviewing the application for Writ of Habeas Corpus in the District Court, and the brief in the Court of Appeal, as well as hearing oral argument, ruled that no actual prejudice resulted. [See: *Novarro v. Pitchess,* 368 F. 2d 803—opinion attached as Petitioner's Exhibit A].

Petitioner continues to urge as a ground for reversal that he should be given the right to amend his petition in the United States District Court, however, in answer to the court's question in oral argument, petitioner admitted that if given the opportunity to amend, he could not state a more favorable factual basis for relief than he presented in his brief before the United States Court of Appeals. This admission has been preserved in the record, by the Court's written opinion [See: Petitioner's Ex. A, p. 2].

Petitioner ignores the provisions of Section 40300 of the California Motor Vehicle Code. Section 40300 which begins Article I, governing arrests (40300 to 40311) indicates that the procedures set down herein are not exclusive.

Vehicle Code Section 40300 provides:

> Application of Chapter. The provisions of this chapter shall govern all peace officers in making arrests for violations of this code without a war-

> rant for offenses committed in their presence, but the procedure prescribed herein shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense of like grade.

It seems obvious that the language "but the procedure prescribed herein (40300-40311) *shall not otherwise be exclusive* of any other method prescribed by law for the *arrest and prosecution* of a person for an offense of like grade" indicates a clear legislative intent that 40306 is not exclusive.

The opinion of the United States Court of Appeals, Ninth Circuit, disposes of the Petitioner's argument that *Griffin v. Illinois,* 351 U.S. 12, 18, is applicable The Court of Appeals said on page 2 [Petitioner's Ex. A]:

> "The criminal procedure in question in our case —the requirement that the complaint be signed by the arresting officer—does not approach in significance the state procedure dealt with in *Griffin.* Moreover, nothing is alleged in Novarro's application or brief on appeal tending to show that the signing of the complaint by a person other than the arresting officer was intended to, or resulted in, an invidious discrimination as between Novarro and other state defendants or actually prejudiced Novarro in defending against the prosecution."

Conclusion.

It is clear therefore, that the petition for Writ of Certiorari does not disclose there has been a violation of petitioner's right under the federal constitution, nor does it show that petitioner has presented a federal question. The Opinion of the United States Court of Appeals for the Ninth Circuit should be affirmed.

Respectfully submitted,

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